

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
WFTV-TV Holdings, Inc.)	Facility I.D. No. 55454
Licensee of WRDQ(TV), Orlando, Florida)	NAL/ Acct. No. 0641420022
)	FRN: 0001842848

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: December 21, 2005

Released: December 23, 2005

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Orlando, Florida. We find that WFTV-TV Holdings, Inc. (WFTV-TV Holdings), licensee of station WRDQ(TV), Orlando, Florida, apparently violated Sections 73.670 and 73.673 of the Commission's Rules (Rules), by failing to comply with the limits on commercial matter in children's programming and failing to provide to program guide publishers an indication of the age group for which its core programming is intended, respectively.¹ Furthermore, we find that WFTV-TV Holdings violated Section 73.3526(e)(11)(i) of the Rules, by failing to place in its public inspection file TV issues/programs lists. For the reasons discussed below, we find WFTV-TV Holdings apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for its violation of Section 73.670 of the Rules and admonish WFTV-TV Holdings for its violations of Sections 73.673 and 73.3526 of the Rules.

II. BACKGROUND

2. In the Children's Television Act of 1990 (CTA), Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. Sections 303a, 303b and 394, Congress directed the Commission to adopt rules, *inter alia*, limiting the number of minutes of commercial matter that television stations may air during children's programming, and to consider in its review of television license renewals the extent to which the licensee has complied with such commercial limits. Pursuant to this statutory mandate, the Commission adopted Section 73.670 of the Rules, 47 C.F.R. § 73.670, which limits the amount of commercial matter which may be aired during children's programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays. The Commission also stated that a program associated with a product, in which commercials for that product are aired, would cause the entire program to be counted as commercial time (a "program-length commercial"). *Children's Television Programming*, 6 FCC

¹ 47 C.F.R. §§ 73.670, 73.673.

Rcd 2111, 2118, *recon. granted in part*, 6 FCC Rcd 5093, 5098 (1991).

3. Moreover, under the Commission's rules implementing the CTA, each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children (core programming).² In *Policies and Rules Concerning the Children's Television Programming, Revision of Programming Policies for Television Broadcast Stations*,³ the Commission adopted several public information initiatives to improve the information to the public regarding programming broadcasters air to fulfill their statutory obligation. One of the public information initiatives requires licensees to provide to publishers of program guides, information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended.⁴ In the *Children's Television Programming Order*, the Commission stated its belief that "program guides are an effective means of providing parents with advance notice of scheduling of educational programs."⁵ Moreover, the Commission indicated that this information would help parents to find appropriate programs for their children and others who want to monitor a station's compliance with the CTA.⁶ The Commission acknowledged, however, that broadcasters cannot require program guide publishers to print this information.⁷ Nonetheless, the Commission concluded that the information is more likely to be included in program listings if broadcasters regularly provide it.

4. Further, Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.⁸ Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.⁹

5. On October 1, 2004, the licensee filed an application for renewal of license (FCC Form 303-S, File No. BRCT-20041001AFD) for station WRDQ(TV), Orlando, Florida. In response to Section IV, Question 5 of that application, the licensee certifies that, during the previous license term, station WRDQ(TV) failed to comply with the limitations on commercial matter in children's programming specified in Section 73.670 of the Rules. In Exhibit 25 to that application, the licensee indicates that station WRDQ(TV) violated the children's television

² 47 C.F.R. § 73.671(a).

³ 11 FCC Rcd 10660 (1996) (*Children's Television Programming Order*).

⁴ 73.673(b).

⁵ *Children's Television Programming Order*, 11 FCC Rcd at 10689.

⁶ *Id.*

⁷ *Id.*

⁸ See 47 C.F.R. § 73.3526.

⁹ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

commercial limits on 59 occasions from the first quarter of 2001 through the first quarter of 2004. Of these commercial overages, one was 15 seconds in duration; 36 were 30 seconds in duration; eleven were one minute and fifteen seconds in duration; and eleven were three minutes and fifteen seconds in duration. With respect to the reason for the overages, WFTV-TV Holdings attributes the 15 and 30 second overages to human error by the station's staff in rescheduling the ABC Network children's programs and indicates that the remaining overages resulted from inadvertence. The licensee states that pursuant to its review of station WRDQ(TV)'s programming after the departure of the employee handling the station's children's programming responsibilities, it discovered an apparent misunderstanding by this former employee of the commercial time that was included in the station's children's programs and the application of the Commission's commercial limits requirements. The licensee asserts that it took immediate steps to ensure the station's future compliance with the children's television commercial limits. The licensee maintains that employee turnover and the "complex and often counterintuitive manner in which the commercial limits requirements must be interpreted and applied were factors leading to these errors." The licensee also avers that the overages were not motivated by monetary benefit. The licensee requests that in reviewing its admitted overages, the Commission consider the mitigating circumstances and WFTV-TV Holdings' record as a licensee with a demonstrated commitment to children and children's programming.¹⁰

6. Moreover, in response to Section IV, Question 9 of the station's renewal application, the licensee certifies that, station WRDQ(TV) failed to provide information identifying each core program aired on its station, including an indication of the target child audience, to publishers of program guides.¹¹ In Exhibit 25 to that application, the licensee states that during preparation of the instant renewal application, the licensee determined that the station staff had misread Question 4 of the Children's Television Programming Report, and during the last few quarters, station WRDQ(TV) had not provided program guide publishers with information regarding the target child audience of the core programs. The licensee also reports that it was unable to confirm that this information was provided to program guide publishers in previous years when the children's programming responsibilities were handled by former employees. The licensee asserts that upon this discovery, station WRDQ(TV) took immediate steps to ensure that the target age range will be provided to program guide publishers.

7. Further, in response to Section IV, Question 3 of that application, the licensee certifies that, during the previous license term, station WRDQ(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Commission's Rules. In Exhibit 17 of that application, the licensee states that WFTV-TV Holdings acquired WRDQ(TV) on February 1, 2001, and that during the transition, there was an oversight in preparing TV issues/programs lists for the first and second quarters of 2001. According to the licensee, when the station discovered this oversight, the station's staff prepared the missing lists and placed them in the public inspection file.

III. DISCUSSION

8. Station WRDQ(TV)'s record of exceeding the children's television commercial

¹⁰ 47 U.S.C. § 504; 47 C.F.R. § 1.80(b)(4).

¹¹ 47 C.F.R. § 73.673.

limits on 59 occasions during the last license term constitutes a willful and repeated violation of Section 73.670 of the Rules. The 59 instances in which station WRDQ(TV) exceeded the children's television commercial limits represent a high number of violations. Further, 22 of the overages were one minute or longer in duration. Overages of this number mean that children have been subjected to commercial matter greatly in excess of the limits contemplated by Congress when it enacted the Children's Television Act of 1990. *Children's Television Programming, supra*, 6 FCC Rcd at 2117-18. In addition, the violations apparently occurred over an extended period of three years. The licensee attributes the violations to human error, inadvertence and what amounts to the lack of knowledge or misunderstanding of the children's television commercial limits by a former employee. However, the Commission has repeatedly rejected human error and/or inadvertence as a basis for excusing violations of the children's television commercial limits. *See, e.g., LeSea Broadcasting Corp. (WHKE(TV))*, 10 FCC Rcd 4977 (MMB 1995); *Buffalo Management Enterprises Corp. (WIVB-TV)*, 10 FCC Rcd 4959 (MMB 1995); *Act III Broadcasting License Corp. (WUTV(TV))*, 10 FCC Rcd 4957 (MMB 1995); *Ramar Communications, Inc. (KJTV(TV))*, 9 FCC Rcd 1831 (MMB 1994). Moreover, while corrective actions may have been taken to prevent subsequent violations of the children's television rules and policies, this does not relieve WFTV-TV Holdings of liability for the violations which have occurred. *See, e.g., WHP Television, L.P.*, 10 FCC Rcd 4979, 4980 (MMB 1995); *Mountain States Broadcasting, Inc. (KMSB-TV)*, 9 FCC Rcd 2545, 2546 (MMB 1994); *R&R Media Corporation WTWS(TV)*, 9 FCC Rcd 1715, 1716 (MMB 1994); *KEVN, Inc.*, 8 FCC Rcd 5077, 5078 (MMB 1993); *International Broadcasting Corp.*, 19 FCC 2d 793, 794 (1969). In addition, we disagree that the other reasons cited by the licensee, employee turnover and "complex" way in which commercial limits requirements are interpreted, provide a basis for reduction or mitigation. In addition, we do not believe that the licensee's "demonstrated commitment to children and children's programming" is a mitigating circumstance in this case.

9. Section 503(b) of the Communications Act of 1934, as amended, (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.¹² The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹³ The term "repeated" means that the violation occurred on more than one day.¹⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may

¹² 47 U.S.C. § 503(b).

¹³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁴ Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

require.”¹⁵

10. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules set a base forfeiture amount of \$8,000 for violation of the children’s television commercialization or programming requirements. However, an upward adjustment is justified in this case in light of the high number of commercial overages in this case. Further, the violations apparently occurred over a period of three years. Therefore, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that WFTV-TV Holdings is liable for a \$20,000 forfeiture for its apparent violation of Section 73.670. Finally, we think an admonition is warranted for the station’s failure to identify for program guide publishers the age group for which its children’s programming is targeted and its failure to place in the public file TV issues/programs lists for two quarters.

11. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission’s Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the renewal application.¹⁶ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”¹⁷

12. On balance, we find that WFTV-TV Holdings’ violations of Sections 73.670, 73.673, and 73.3526 do not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WRDQ(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Section 1.80 of the Rules, WFTV-TV Holdings, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty thousand dollars (\$20,000) for willful and repeated violation of Sections 73.670 of the Rules.

¹⁵ 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

¹⁶ 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

¹⁷ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

14. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability, WFTV-TV Holdings, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

15. IT IS FURTHER ORDERED that, the application (File No. BRCT-20041001AFD) of WFTV-TV Holdings, Inc. for renewal of license for station WRDQ(TV), Orlando, Florida, IS GRANTED.

16. Finally, IT IS ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to WFTV-TV Holdings, Inc. at the address listed above, and to its counsel, Kevin F. Reed, Esq., Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

¹⁸ See 47 C.F.R. § 1.1914.